

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
WILLIAM O'DELL McLAIN, JR.,	:	BANKRUPTCY CASE
	:	NO. 01-12342-WHD
Debtor.	:	
_____	:	
	:	
JERILYN McLAIN,	:	
	:	
Plaintiff,	:	ADVERSARY PROCEEDING
	:	NO. 02-1770
v.	:	
	:	
GARY W. BROWN, Trustee for the	:	
Estate of William O. McLain, Jr.,	:	
	:	
Defendant.	:	
_____	:	
	:	
GARY W. BROWN, Trustee for the	:	
Estate of William O. McLain, Jr.,	:	
	:	
Counter-Claimant,	:	
	:	
v.	:	
	:	
JERILYN McLAIN,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Counter-Defendant	:	BANKRUPTCY CODE

ORDER

Before the Court is the Motion for Reconsideration filed by Gary W. Brown (hereinafter the "Trustee") in his capacity as the trustee of the bankruptcy estate of William O. McLain, Jr. (hereinafter the "Debtor"). This motion arises in connection with a

counterclaim filed by the Trustee against Jerilyn McLain (hereinafter “McLain”) to avoid and recover certain transfers in accordance with §§ 544, 548, 549 and 550 of the Bankruptcy Code. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. §§ 157(b)(2)(H); 1334.

On September 30, 2004, the Court entered an order granting the Trustee partial summary judgment as to one of his claims against McLain. The Court also denied summary judgment as to the remainder of the claims. On October 12, 2004, the Trustee filed the instant motion for reconsideration. McLain has objected to the Trustee's request.

In the original motion for summary judgment, the Trustee sought judgment on his claims that: 1) the estate is entitled to recover the Debtor's beneficial interest in certain pieces of real property, title to which the Debtor transferred to McLain several years prior to the filing of his bankruptcy petition; 2) the estate is entitled to recover \$36,079.59, which the Trustee asserts the Debtor fraudulently transferred to McLain within one year prior to the filing; and 3) the Debtor made two unauthorized, post-petition transfers that should be avoided for the benefit of the Debtor's estate. After considering the briefs filed by the parties and the evidence relied upon therein, the Court declined to rule on the Trustee's claim that the Debtor retained a secret beneficial interest that is recoverable by the estate and invited the Trustee to file a renewed summary judgment motion on his alternative argument that the conveyance of the property could be avoided in accordance with O.C.G.A. § 18-2-22.

Additionally, the Court concluded that questions of material fact remained as to

whether the transfer of \$36,079.59 from a money market account jointly held by the Debtor and McLain, to a deposit account, which was held solely in McLain's name, is subject to avoidance under § 548. Although the Court found that the undisputed facts established that the transfer had been made, the Court could not determine whether the Debtor had held a 100% interest in the funds, as the Trustee contended, or no interest in the funds, as McLain asserted. The evidence submitted by the Trustee to support his contention consisted of various account records, deposit slips, and checks that may be relevant to determining the source of deposits made into the money market account at issue. The Court held that these records had not been properly entered into the record, as they were not attached to an appropriate affidavit, and, therefore, could not be relied upon by the Court. However, the Court did conclude that, assuming the Trustee could establish that the Debtor had an interest in the funds, no question would remain that the Debtor transferred the funds with the intent to hinder, delay, or defraud his creditors. Therefore, the Court significantly narrowed the issues that must be tried on the Trustee's § 548 claim.

Finally, the Court found that the Debtor owned an insurance policy and that the proceeds obtained from that policy became property of the Debtor's bankruptcy estate. Although the Court determined that the Debtor transferred the funds after the filing of his bankruptcy petition, the Court could not find that McLain was a transferee of these funds. Accordingly, the Court denied the motion for summary judgment on that claim.

In the Trustee's motion for reconsideration, the Trustee suggests that the Court should have considered the exhibits attached to the Trustee's motion for summary judgment, despite

the Court's observation that the documents had not properly entered the record. Additionally, the Trustee has asked the Court for leave to amend and supplement the motion for summary judgment with newly obtained evidence that may shed some light upon the issue of what became of the proceeds of the Debtor's life insurance policy.

The Court appreciates the Trustee's desire to have as many issues as possible resolved through pre-trial motions. Although the Court sympathizes with McLain's desire for finality in these proceedings, the Court will permit the Trustee to file a renewed motion for summary judgment on his remaining § 549/550 claim. The Trustee should file a new statement of undisputed material facts relevant to this claim and refer to any newly obtained evidence within his renewed motion. That being said, the Court will not reconsider its denial of summary judgment on the Trustee's § 548 claim in which he seeks avoidance of the transfer of \$36,079.59. The Court considered the admissible evidence presented at the time the Trustee filed his motion and, in doing so, was able to narrow significantly the evidence that must be heard and the facts that must be determined at trial. Having reviewed the documents and having concluded that a trial on this issue would be beneficial, the Court will set this issue for trial following the disposition of any renewed motion for summary judgment filed by the Trustee.¹

CONCLUSION

¹ As noted in the Court's Order, the Trustee may also file a renewed motion for summary judgment as to the issue of whether the real property transfers are avoidable under O.C.G.A. § 18-2-22.

Having carefully considered the Trustee's Motion for Reconsideration, the Motion is hereby **GRANTED** in part and **DENIED** in part for the reasons discussed above.

IT IS SO ORDERED.

At Newnan, Georgia, this _____ day of March, 2005.

W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE

